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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

DEPARTMENT ORDER

IN THE MATTER OF

NEW ENGLAND WASTE SERVICE OF)	SOLID WASTE
MAINE, INC. d/b/a PINE TREE LANDFILL)	ORDER
HAMPDEN, PENOBSCOT COUNTY, MAINE)	
SECURE III LANDFILL)	
MSW DISPOSAL AND)	
REVISED PUBLIC BENEFIT DETERMINATION)	
#S-001987-WD-QA-M (CORRECTED COPY))	
(APPROVAL WITH CONDITIONS))	MINOR REVISION

Pursuant to the provisions of 38 M.R.S.A. Section 1301 et seq., and 06-096 CMR Chapters 400 and 401, Solid Waste Management Regulations, effective September 6, 1999, the Department of Environmental Protection ("Department") has considered the application of NEW ENGLAND WASTE SERVICE OF MAINE, INC., d/b/a PINE TREE LANDFILL with its supportive data, staff review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

I. APPLICATION SUMMARY

- A. Application: New England Waste Service of Maine, Inc., d/b/a/ Pine Tree Landfill ("PTL"), formerly known as Sawyer Environmental Recovery Facilities, Inc. ("SERF"), has applied for a minor revision to Department License #S-01987-WD-GZ-N, dated October 20, 1998 and affirmed by the Board of Environmental Protection on March 24, 1999, which approved the construction and operation of the Secure III Landfill Expansion, Phases VI, VII and VIII ("Secure III Expansion"). PTL proposes to accept unprocessed municipal solid waste ("MSW") for disposal in the Secure III Expansion.
- B. History: After obtaining a public benefit determination dated June 26, 1997, SERF received approval from the Department on October 20, 1998 to construct and operate the Secure III Expansion. The Department license was appealed to the Board of Environmental Protection ("Board") on November 19, 1998; on March 24, 1999, the Board denied the appellants' requests for a public hearing, denied the appellants' appeals, and affirmed Department Order # S-01987-WD-GZ-N with modifications to two special conditions and the addition of two special conditions requiring additional surface water monitoring and that SERF offer to purchase natural screening for nearby landowners with a view of the landfill.

Casella Waste Systems, Inc. ("Casella") owns PTL. In April, 2001, after this application was accepted for processing, SERF merged with Pine Tree Waste, Inc., another Casella subsidiary, and SERF's name was changed to New England Waste Service of Maine, Inc., d/b/a Pine Tree Landfill.

The approximately 40 acre Secure III Expansion is located, in part, over the Conventional Landfill, a closed, non-secure landfill containing primarily municipal solid waste. As licensed by the Department, it will provide approximately 3.3 million cubic yards of disposal capacity. Phase VIII-A of the landfill is currently operational, and approval to begin placing waste in Phase VI of the landfill was provided by the Department on October 15, 2001.

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- C. Summary of Proposal: PTL now requests approval to dispose of unprocessed MSW in the Secure III Expansion, in addition to the other solid wastes currently accepted. (See Finding of Fact #4 for a description of solid wastes currently accepted.) PTL proposes to obtain unprocessed MSW from 3 categories of sources: bypass waste from the Penobscot Energy Recovery Company ("PERC") MSW incinerator located in Orrington, Maine and the Maine Energy Recovery Company ("Maine Energy") MSW incinerator in Biddeford, Maine; waste delivered under an interruptible contract with PERC; and waste deliveries in excess of processing capacity at other MSW incinerators in Maine. PTL is already licensed to accept front-end process residue ("FEPR") which is a residue from the processing of MSW at MSW incinerators, and has been allowed to accept small quantities of refuse-derived fuel ("RDF") from Maine Energy during 2001. (RDF is MSW which has been processed prior to combustion to increase the heat input value of the waste.) No changes to PTL's operations are necessary to handle unprocessed MSW. PTL commits to continuing to meet its disposal contracts with its in-state waste generation customers.

The proposal is described in the application dated March 26, 2001, prepared by the applicant and its consultant, Sevee & Maher Engineers, Inc., and additional submittals dated May 9, 2001, June 5, 2001 June 20, 2001, November 30, 2001, January 25, 2002, May 6, 2002 and August 15, 2002 prepared in response to questions and comments on the application.

As described in findings of fact below, PTL's proposal does not increase the capacity of the facility, significantly alter the siting, design or operation of the facility, or significantly alter the nature of the activities at the facility to an extent that would require the Department to modify any findings with respect to any of the licensing criteria. However, PTL is required to obtain approval for a minor revision to its license due to the potential of the proposal to impact the environment, public health or welfare, or to create a nuisance. In addition, the Department has reconfirmed the public benefit determination for the Secure III Expansion in light of the change to the mix of wastes that may be accepted at PTL pursuant to this order, and updated the determination.

2. SOURCES OF MSW

PTL has identified the following 3 categories of unprocessed MSW as sources for the MSW it proposes to accept.

- A. Bypass waste from PERC and Maine Energy: Unprocessed MSW from this source would be generated by municipalities and commercial entities with a disposal contract with PERC or Maine Energy. This would be MSW that PERC or Maine Energy is required by its contracts to accept, but is unable to accept for reasons such as a temporary shut down for repairs or maintenance. PTL estimated the annual contract disposal capacity of PERC and Maine Energy at more than 250,000 tons per year at each facility, and has stated that the maximum operating capacity of Maine Energy is 334,342 tons per year. PTL cannot estimate the duration of future shutdowns at either facility. Both PERC and Maine Energy have requested proposals from qualified disposal facilities for bypass waste disposal services. PTL has proposed that the total amount of unprocessed MSW accepted by Maine Energy plus the unprocessed MSW bypassed to PTL by Maine Energy will not exceed 310,000 tons per year.. PTL and Maine Energy have also agreed that the annual amount of RDF incinerated at Maine Energy will not be less than 70% of the total annual amount of MSW processed by Maine Energy.

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- B. Waste delivered under an interruptible contract with PERC: Casella, the parent company of PTL, has entered into interruptible contracts with PERC for the delivery of unprocessed MSW from both within and outside Maine to PERC for disposal. Waste deliveries to PERC under interruptible contracts can be suspended at PERC's discretion when required by operational conditions (such as a full tipping floor or a boiler outage) or during times (typically summer) when plant capacity is dedicated to non-interruptible contracted waste. Under the interruptible contracts, Casella must make annual deliveries of at least 17,500 tons of MSW from outside Maine and 19,800 tons of MSW from within Maine (unless this quantity is reduced, at Casella's option, by a Maine municipality entering into a new charter contract with the Municipal Review Committee). (See Finding of Fact #3.A for a description of the Municipal Review Committee's role at PERC.) Since suspension of delivery is at PERC's discretion, PTL cannot predict the actual quantity of unprocessed MSW in this category which could be diverted to PTL for disposal.
- C. Waste deliveries in excess of processing capacity at other MSW incinerators in Maine: Delivery of MSW to other MSW incinerators in Maine can exceed a facility's capacity on a daily, weekly or seasonal capacity, due to either planned outages or unplanned production problems. All MSW incinerators in Maine, except MMWAC, accept waste from sources both within and outside Maine. PTL cannot predict the quantity of unprocessed MSW which could be available in this category, but it has provided the average historical daily delivery rates of MSW and other acceptable wastes at Maine Energy in Biddeford (1100 tons/day), MMWAC in Auburn (320 tons/day), PERC in Orrington (1120 tons/day) and RWS in Scarborough (680 tons/day). This is the estimated maximum amount of MSW available from this category, if all 4 incinerators were unable to dispose of MSW at one time. PTL states it would not be its practice to accept unprocessed MSW from these diverted waste streams on a long-term basis; rather, it would accept the bypassed waste for periods of several days to several weeks in order to provide disposal capacity while the cause of the diversion at the incinerator was being corrected.

PTL also originally proposed to accept unprocessed MSW from both in-state and out-of-state sources not covered in A through C, above, in a category called "ongoing market opportunities". PTL withdrew its request for this category on November 30, 2001.

3. PUBLIC PARTICIPATION

The Department received written comments on the application from 7 parties: the Municipal Review Committee ("MRC"), in letters dated May 1, 2001, May 30, 2001 and July 5, 2001; Senator Tom Sawyer, in a letter dated June 13, 2001; the State Planning Office ("SPO"), in a letter dated July 19, 2001; the Town of Glenburn, in a letter dated July 18, 2001; Representative Edward Povich, in a letter dated August 6, 2001; Tri-County Solid Waste Advisory Company ("Tri-County") through its attorney, Marilyn Mistretta, in a letter dated September 25, 2001; and Regional Waste Systems, Inc. ("RWS"), in 2 letters dated November 30, 2001. In addition, Department staff ("staff") also met with members of the MRC Board of Directors to discuss the application, as well as with owners of PERC. Staff also discussed the application with Greg Louder, the executive director of MRC, and Bill Ferdinand, attorney for MRC; several legislators or their staff; Susan Lessard Bruno from the Town of Hampden; George MacDonald from SPO's Waste Management and Recycling Program; Kirk Goddard, Marilyn Mistretta, Barry Tibbitts and

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Lisa Parker representing Tri-County's interests; and Charles Foshay, General Manager of RWS, and Nicholas Nadzo, attorney for RWS.

A draft order was distributed on December 4, 2001 to persons having an interest in the project. Comments on the draft order were received from 6 parties: PTL, Senator Sawyer, MMWAC, PERC, MRC and Nicholas Nadzo, Esq., representing RWS. Some comments were summarized in Finding of Fact #3.H, below; many others were incorporated throughout the order.

A. MRC:

- (1) Comments from MRC: The majority of the comments on the application were received from the MRC. The MRC represents 136 Charter Municipalities that have contracted with PERC through 2018. The MRC is a non-profit corporation formed to represent the interests in the administration of the contracts of the municipalities, known as the "equity charter municipalities", who entered into amended long-term contracts with PERC in 1991. The MRC facilitates the review of financial operations at and performance of PERC. It opposes PTL accepting unprocessed MSW other than bypass from PERC where PERC has stopped accepting waste in its normal course of operations for more than 48 hours or is redirecting waste from its facility to another facility. In summary, the MRC argues that approval of the application will: (1) "transform the Secure III Expansion from a special waste landfill into a MSW landfill without showing the need for additional MSW disposal capacity in Maine and violate the prior basis for approval of the landfill"; (2) "violate the state's overall regulatory and management policies including the state waste management hierarchy and preservation of landfill capacity"; (3) cause substantial financial hardship on the PERC facility and the municipalities that rely on PERC as a long-term method of municipal solid waste disposal by drawing Maine MSW, particularly commercial MSW, away from PERC; and (4) "so drastically change the licensing of the facility that it would upset state policy on waste management and the public benefit determination process which underlies it" which is, according to MRC, "to provide disposal capacity for Maine waste while limiting excess disposal capacity that could be used for out-of-state waste".

MRC asserts that unprocessed MSW is a completely different waste stream from FEPR, and that the disposal of unprocessed MSW at PTL would significantly alter the nature of activity at PTL and require modification of the findings that were made to license the landfill. It also asserts that PTL needed to file an amendment application because adding new disposal capacity for a new and different waste stream without an examination of the need for the disposal capacity would frustrate the main purpose of the public benefit determination and the public benefit determination was one of the key criteria on which the Secure III Expansion license was based. MRC questions whether a facility should be able to accept new waste streams without obtaining either a revised public benefit determination or a license amendment. Other than the PERC bypass situation described above, MRC believes the acceptance of unprocessed MSW at PTL would "utilize the scarce space at the landfill inefficiently and unnecessarily, hastening the schedule for

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developing the state-owned Carpenter Ridge Landfill and other new landfills". It states that "State law and policy regulate the amount of disposal capacity according to the needs of the State, it does not allow the free market to determine this capacity". The MRC believes that a "new Public Benefit Determination reviewed pursuant to a license amendment would likely find that additional MSW disposal capacity is not needed at the time and, in fact, is contrary to the public interest". However, MRC also notes that the Department is "not charged with determining the economic impacts of additional waste capacity".

MRC states PERC has significant capacity available to accept additional MSW from within the State of Maine. PERC currently accepts about 280,000 tons of MSW annually; recently, PERC has been increasingly unable to reach its capacity with Maine MSW alone. Although PERC prefers to serve Maine communities, significant quantities of MSW accepted at PERC are delivered from outside Maine, and PERC often supplements its in-state and out-of-state MSW fuel supply with biomass. In February and March, 2001 PERC was unable to operate at capacity because it was unable to attract sufficient waste. MRC also asserts it understands other MSW incinerators and landfills in Maine have capacity available for unprocessed MSW, and it does not believe additional MSW landfill space is warranted, especially so close to PERC.

MRC doubts that licensing conditions requiring reporting of the sources of MSW entering the PTL facility could be enforced because MSW is not manifested and it is not clear what the Department can/will do if out-of-state waste exceeds a set threshold because of constitutional controls on state power. MRC notes that PTL's controlling parent company, Casella, could choose to utilize its landfill space at the highest rate possible, including the disposal of unprocessed MSW at PTL as quickly as the Department would allow.

- (2) Staff response to MRC comments: Staff comment that PERC's license finds that PERC expects to achieve an effective annual processing capacity of 225,000 tons of MSW, and that the facility would be capable of processing up to 721 tons/day of MSW. As noted by MRC, PERC currently accepts more than this quantity of MSW. During the high waste generation months (primarily the summer months) and during plant upset conditions such as fires or equipment breakdowns, PERC experiences operational problems handling the volume of incoming waste. Based on the operational problems experienced in the last few years, staff comment that the 48 hours the MRC proposes to wait before diverting waste from PERC is too long; municipal collection and hauling systems are not equipped to hold waste for days longer than expected. Operating problems at PERC are currently being analyzed by the Department during review of a pending PERC application.

Staff further comment that MRC and PTL provided a copy of the Settlement Agreement, dated March 1, 2001, between Energy National, Inc. (the majority owner and managing general partner of PERC upon the signing of the Settlement Agreement); Casella (the parent company of PTL); PERC; the PERC Management Company Limited Partnership (owned by Casella, and the managing general partner of PERC until the Settlement Agreement was signed and its interest in PERC was sold to Energy National, Inc.);

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SERF; and MRC. The Settlement Agreement ended litigation instituted by MRC against the other parties. The Settlement Agreement explicitly establishes that during the effective term of the Ash Disposal Agreement (contained in a section of the Settlement Agreement) Casella and PTL may not deliver to or accept at PTL any MSW, either commercial or residential in nature, from any of the PERC Equity Charter Municipalities (listed in Appendix A of the Settlement Agreement) or any other municipality represented by MRC (including the non-contract municipalities listed in Appendix B of the Settlement Agreement), except in the event of a shutdown or suspension of operations at PERC, or by other written request and instructions of PERC. The Settlement Agreement further states "...neither Casella nor PTL shall directly or indirectly divert or cause to be diverted, or encourage or promote any other party to divert or cause to be diverted, MSW from any Charter Municipality, to Maine Energy Recovery Company, or to any landfill, solid waste disposal facility or system other than PERC." The Settlement Agreement provides that MRC and PERC would each be irreparably harmed by a violation of this covenant, and that Casella and PTL consent to the entry of injunctive or other equitable relief if the covenant is breached. The effective term of the Ash Disposal Agreement is five years from February 1, 2001; it may be renewed by mutual written agreement of the parties for up to 3 consecutive 5-year periods.

Staff also comment that the landfill capacity used by the disposal of bypassed MSW will be somewhat offset by lesser quantities of FEPR/OBW and MSW ash requiring disposal during a bypass situation. For example, according to PERC's 2000 annual report, it accepted 280,619 tons of MSW, and produced 66,388 tons of FEPR/OBW and 52,373 tons of MSW ash. However, a direct comparison cannot be made because the weight to volume ratio between the 3 wastes differs: MSW is approximately 1400-1600 pounds/cubic yard; FEPR is approximately 1900-2100 pounds/cubic yard; and MSW ash is approximately 2200-2400 pounds/cubic yard. (CDD is approximately 1100-1300 pounds/cubic yard.)

- (3) Department findings on MRC comments: The Department finds that the Settlement Agreement prohibits PTL from drawing MSW away from the 136 Charter Municipalities for the duration of the Ash Disposal Agreement, that PTL will be competing for other MSW with all other incinerators and landfills licensed to accept MSW, and that conditions placed in this approval on PTL's acceptance of unprocessed MSW will ensure that the capacity of the Secure III Expansion is not exhausted within an unreasonably short time (see Finding of Fact #6, below).

The Department also finds that PTL is not proposing to expand the landfill or provide any additional disposal capacity, and that less than one-half of the solid waste disposed of in Secure III in 2000 was special waste. Approval of this application will not require that the Department modify findings in the license for the Secure III Expansion. (See Finding of Fact #4, below, for a description of the types and quantities of solid wastes disposed in the Secure III Landfill and the technical implications of acceptance of unprocessed MSW in the Secure III Expansion.) The use of a minor revision application for review of this proposal is consistent with review of other solid waste proposals. A public benefit determination is required by statute to be made by the Department prior to an application

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for a new or expanded solid waste disposal facility. The public benefit determination for the Secure III Expansion was issued on June 26, 1997. It was reconfirmed during the processing of this application, due to the nature of the changes proposed in the application, although not required by statute (see Finding of Fact #6, below).

The Department further finds that state policy favors an integrated approach to solid waste management; reduction, reuse and recycling are preferred over both incineration and landfilling. Although incineration is above landfilling, the Solid Waste Management Regulations ("Rules") require that incinerators maintain valid contracts for FEPR, bypass waste and ash. During some months of the year, it may be possible for other Maine incinerators to handle bypass, but at other times it is not a feasible option (see Finding of Fact #3.B, below).

B SPO:

- (1) Comments from SPO: SPO commented, in summary, that it supports PTL's proposal to accept bypass from PERC and waste delivered under interruptible contracts, but has questions about the acceptance of waste deliveries in excess of processing capacity at other MSW incinerators in Maine and waste from ongoing market opportunities. SPO notes that recent tonnage information from Maine's MSW incinerators indicates that the increases in waste volumes seen in the last 10 years have leveled off or dropped, that out-of-state MSW is being obtained by the incinerators in order to meet their electrical producing contracts, and thus there does not appear to be an excess of MSW being delivered to the incinerators from contracted entities. SPO suggests that approval of the application "clarify under which circumstances waste delivered in excess of MSW incinerator processing capacity, due to facility specific operations could be permitted". SPO found it difficult to evaluate the long-term potential impacts of the ongoing market opportunities category, because no projected annual tonnage in this category was provided in the application. SPO notes that major policy decisions were enacted to encourage communities to support MSW incineration, and that large financial commitments from both the public and private sectors were secured. SPO also notes that unprocessed MSW was not a category of waste listed in the public benefit application for the Secure III Expansion, and that the 1998 State Waste Management Plan ("the State Plan") did not indicate a need for additional disposal capacity for MSW in the near future. SPO suggested that a capacity restriction applicable to the ongoing market opportunities category be placed in the license.

- (2) Department findings on SPO comments: The Department finds that PTL has withdrawn its request to accept MSW in the ongoing market opportunities category; see Finding of Fact #2. The Department also finds that the vision statement for the State Plan noted that the State Plan might be outdated before the next scheduled update and that SPO's goal was to provide ongoing analysis and recommendations throughout the 5 year planning cycle. The latest disposal capacity report prepared by SPO, "1999 Solid Waste Generation and Disposal Capacity Report to the Joint Standing Committee on Natural Resources of the 120th Legislature", dated January 2001 ("the report"), indicates that the quantity of waste generated in Maine continues to increase, and that recycling efforts

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have been unable to keep pace with the increase in MSW generation. In compiling the report, SPO considered the 2 commercial landfills in Maine (PTL's Secure III and the Waste Management Inc. Crossroads Landfill in Norridgewock) as being permitted to accept MSW (including construction and demolition debris ("CDD")) and special waste, and notes that "having 2 commercial landfills operating in the state has served the state well in terms of providing competitive disposal capacity options for MSW, special wastes and CDD". The report also finds the following:

"Maine's 4 waste-to energy facilities receive and process approximately 32% of Maine's generated MSW. While they have provided a reliable outlet for MSW, the seasonal nature of waste generation has caused some tonnage overage problems during the summer months and the need to 'attract' additional tonnage during the winter months. The incinerators continue to provide service in reducing the volume of MSW requiring disposal and in 1999 operated at just under 106% of their combined design capability."

Finally, the Department finds that the proposed license clarifies the circumstances under which MSW can be diverted from incinerators to PTL; specifically short-term diversions linked to planned outages or unplanned production problems at the incinerators.

- C. Town of Glenburn ("Glenburn"): Glenburn stated it opposes approval of the application for 2 reasons: approval of this application could place Glenburn in default of its Guaranteed Annual Tonnage Agreement with PERC if MSW generated in Glenburn bypasses PERC; and approval of this project has the potential for rapidly diminishing the landfill capacity available to the area and possibly hastening the opening of the State-owned Carpenter Ridge Landfill. Staff comment that Glenburn is an Equity Charter Municipality, thus PTL is prohibited by the Settlement Agreement from bypassing Glenburn's MSW to the Secure III Expansion without PERC's permission. (See Finding of Fact #3.A, above.)
- D. Legislators: Two state legislators submitted written comments on the application: Senator Tom Sawyer, Jr. and State Representative Edward Povich. Senator Sawyer asked for copies of pertinent communications on this application. Representative Povich's concern is that PTL has limited capacity in the landfill and since its current use is as the primary disposal facility for waste from PERC, it is important that PERC's needs be satisfied even if this application is approved. Additional legislators, including Senator Sharon Anglin Treat and Representative Scott Cowger, talked with staff about the scope of the application and requested the opportunity to comment on the draft Department order for the project. Their comments on the application are addressed in Findings of Fact #3.A, #3.B, #4 and #6, above and below.
- E. Town of Hampden: Susan Lessard Bruno, town manager, verbally discussed potential operational problems with handling unprocessed MSW, but agreed that the procedures in place for handling FEPR should be effective with MSW. These comments are addressed in Findings of Fact #4 and #5, below.
- F. Tri-County: Tri-County is a group of 17 municipalities in Southern Maine who contract with Maine Energy for disposal of their MSW. Tri-County requested that the Department delay

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consideration of this application until Tri-County reviewed the effects of the application on its members and the Department reviewed a public benefit determination. Staff comment that Tri-County reviewed the project file, but submitted no comments on the contents of the application; however, Tri-County representatives met with staff and expressed their concern that unprocessed MSW and/or excess processed MSW (either as FEPR or RDF) may be shipped from Maine Energy to PTL. Tri-County subsequently indicated to the Department that it met with Maine Energy and its concerns have been satisfactorily addressed by Maine Energy.

G. RWS: RWS is a quasi-municipal non-profit corporation consisting of 21 municipalities, which owns and operates an incinerator, landfills and a recycling facility in southern Maine. RWS requested that the commissioner of the Department determine whether approval of this application will provide a substantial public benefit in accordance with 38 M.R.S.A. §1310-AA, and that the Department suspend processing of this minor revision application until a determination of public benefit has been made by the commissioner and all appeals of the determination have been exhausted. RWS expressed concern that a determination of public benefit may not be appealable pursuant to 38 M.R.S.A. §1310-N(3-A) if it is done as part of the licensing process. The Department finds that, as described in Findings of Fact #3.H(1) and 6(B), below, a determination of public benefit is not required by statute for this type of application.

H. Review of the December 4, 2001 draft order: Several parties commented substantively on the draft order. In general, their major comments fell into 3 categories; their comments are summarized below. Other comments are addressed throughout the order.

- (1) PTL's Public Benefit Determination: Comments were received on the revision to the 1997 Public Benefit Determination. In summary, commentors stated that the Department should use only the State Plan when considering a public benefit determination, and that disposing of unprocessed MSW should trigger a complete review of the landfill's public benefit determination even though no expansion of the landfill is proposed. The commentors would like to see a public benefit determination made whenever a new waste or a change in operations occurs that was not previously considered in a facility's public benefit determination.

The Department finds that, as explained in Finding of Fact #6.B and C, below, a new public benefit determination is not required by statute prior to the processing of PTL's request to accept unprocessed MSW because PTL is not proposing to expand the capacity of the Secure III Expansion; 38 M.R.S.A. §1310-AA states an application for a public benefit determination is to be submitted for a new or expanded solid waste disposal facility. However, the Department also finds that it did reconfirm the original public benefit in light of the changes proposed by PTL.

- (2) When unprocessed MSW can go to PTL: PERC and MRC suggested a definition of bypass that is consistent with PERC's contracts with municipalities; they stated that only the owner/operator of an incinerator should be able to call a bypass at that facility, or to interrupt contracts. RWS, PERC, MRC and MMWAC expressed concern that the Maine Energy incinerator could arrange for the delivery of more MSW than it can handle and then bypass the excess MSW to PTL.

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The Department finds that bypass is defined in Chapter 400.1(V) of the Rules; it "means any solid waste that is destined for disposal, processing or beneficial use at a solid waste facility, but which cannot be disposed, processed, or beneficially used at that facility because of malfunction, insufficient capacity, inability of the facility to process or burn, down-time, or any other reason". The Department further finds that it is appropriate for certain regulatory entities, in addition to the owner/operator of an incinerator, to have the right to call a bypass or interrupt contracts; for example, a regulatory entity with jurisdiction over the operation of the incinerator may call a bypass for safety reasons or because the owner/operator has failed to recognize a bypass is appropriate. However, the Department finds that PTL may not accept waste from an incinerator without verifiable authorization from either the owner/operator of an incinerator or from a regulatory entity with jurisdiction over the incinerator that a bypass has been called or, for holders of interruptible contracts, the contracts have been interrupted in accordance with the contractual provisions.

The Department also finds that, since Maine Energy and PTL are both owned by Casella, in order to assure that Maine Energy does not routinely arrange for the delivery of more MSW than it can handle and then ship the excess MSW to PTL, a limit should be placed on the amount of unprocessed MSW that Maine Energy can bypass to PTL's Secure III Expansion. The quantity of MSW identified by Maine Energy in its talks with its user municipalities as the maximum amount of MSW it can process and incinerate per year is 310,000 tons. Casella has clarified that it does not intend to accept MSW at Maine Energy with the intention of bypassing it to PTL. Through an agreement with the MRC, PTL proposes that the total amount of unprocessed MSW accepted by Maine Energy plus the unprocessed MSW bypassed to PTL by Maine Energy will not exceed 310,000 tons per year, and also that the annual amount of RDF incinerated at Maine Energy will not be less than 70% of the total annual amount of MSW processed by Maine Energy (see Finding of Fact #2.A). The Department therefore finds that the total amount of unprocessed MSW accepted by Maine Energy plus the unprocessed MSW bypassed to PTL by Maine Energy for disposal at PTL shall not exceed 310,000 tons in any calendar year. The Department further finds that the annual amount of RDF incinerated at Maine Energy shall not be less than 70% of the total annual amount of MSW processed by Maine Energy.

- (3) Tracking of MSW deliveries and enforcement of the license: Commentors suggested the Department be notified if unprocessed MSW was bypassed for more than 1 week (2 weeks was proposed in the draft order). PERC requested an enforcement mechanism more specific than 38 M.R.S.A. §341-D be used, and that weight limits on the amount of unprocessed MSW that may be accepted be specified. The commentors stated that reporting on unprocessed MSW accepted should occur monthly rather than the annual reporting in the draft order.

The Department finds that PTL will be required to notify the Department if waste deliveries in excess of processing capacity at any MSW incinerators continue for more than 1 week, and that PTL will be required to report the quantities and sources of MSW

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MSW DISPOSAL AND)	
REVISED PUBLIC BENEFIT DETERMINATION)	
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accepted in the summary of wastes received in currently submits to the Department on a monthly basis. The Department finds that no more specific enforcement mechanism than 38 M.R.S.A. §341-D is necessary.

4. TECHNICAL REVIEW

Chapter 400.1 of the Rules defines MSW as including FEPR from the processing of MSW. The operations manual for the Secure III Expansion contains provisions for the handling of FEPR; staff comment that the existing provisions for handling FEPR are adequate for handling all MSW. The operations manual addresses litter control, odor control and the application of cover material on at least a daily basis. PTL operates a mobile fogging system to control odors from waste delivered to the landfill. PTL is currently installing a comprehensive system for the collection and flaring of gas generated by the Conventional and Secure III Landfills; landfill gas generated by the acceptance of additional FEPR or unprocessed MSW can be handled by the active gas system as designed. Based on studies of leachate quantity and quality from other landfills, leachate quality and quantity at PTL is not expected to change with the acceptance of unprocessed MSW.

Currently, PTL is licensed to accept FEPR and oversized bulky waste ("OBW") from refuse-derived fuel MSW incinerators (comprising about 34% of the total waste accepted in 2000); ash from MSW incinerators (comprising about 35% of the total waste accepted in 2000); ash from wood, biomass and fossil fuel boilers, and biomedical incinerators (comprising about 4% of the total waste accepted in 2000); CDD (comprising about 16% of the total waste accepted in 2000); sludges from pulp and paper mills, and publicly owned treatment facilities (comprising about 1% of the total waste accepted in 2000); non-friable asbestos (comprising about 1% of the total waste accepted in 2000); other miscellaneous special wastes such as sandblast grit, leather wastes, contaminated soils, some nonrecoverable oily wastes and some off-specification, spent, spilled and/or discarded non-hazardous commercial chemical products (comprising about 8% of the total waste accepted in 2000); and miscellaneous solid wastes that are not special wastes, such as netting, treatment plant screenings, and food to be destroyed (comprising about 1% of the total waste accepted in 2000). In 2000, approximately 3.5% (5,244.23 tons) of the waste disposed of in Secure III was from out-of-state generators; the average annual percentage of out-of-state waste since Secure III opened in 1993 is 2.24%.

The Department finds that the acceptance of unprocessed MSW from the 3 sources described by PTL in Finding of Fact #2, above, is compatible with the other wastes, including special wastes, approved for disposal in the Secure III Expansion and with the landfill components, and that the unprocessed MSW will not interfere with the operations or performance of the landfill. The Department further finds that the acceptance of unprocessed MSW from the 3 sources, as proposed, will not unreasonably affect the expected life of the Secure III Expansion, provided the conditions placed on this approval are complied with (see Finding of Fact #6, below).

5. OPERATIONS

The operations manual for the Secure III Expansion contains provisions for the handling of FEPR, including the application of daily (twice daily during hot weather) cover and the control of windblown litter, birds and vectors. PTL has installed a fogging system to control odors in the active portion of the landfill. The open operational area is minimized to reduce the potential for odor production. As is

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MSW DISPOSAL AND)	
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specified in the operations manual for disposal of FEPR and OBW, no MSW will be placed within 2 feet of the sideslope liner or the final waste grade. The Department finds that the current procedures for the handling of FEPR are also adequate for the disposal of unprocessed MSW in the Secure III Expansion.

6. PUBLIC BENEFIT DETERMINATION

PTL states it will continue to comply with its public benefit determination for the Secure III Expansion by serving its in-state waste generation customers, whose wastes include ash, FEPR and OBW from the MSW incinerators; CDD; and other special wastes. However, the Department has reconfirmed its public benefit determination for the Secure III Expansion in light of the change to the mix of wastes that may be accepted at PTL pursuant to this order.

- A. June 1997 Application for Public Benefit Determination: PTL proposed to dispose of the following wastes in the Secure III Expansion: PERC MSW ash, PERC FEPR and OBW, CDD, treatment plant sludge, and miscellaneous special waste. The expected quantities of each waste are shown in the table in Finding of Fact #6.B, below.

PERC was estimated to incinerate approximately 250,000 tons of MSW per year. PTL expected to be the exclusive disposal location for residues from PERC, and the application included a letter of support for the application from MRC. In its letter, MRC noted that the PERC charter municipalities deliver approximately 180,000 tons of MSW to PERC per year, and that MRC had an option to purchase PERC in 2003. MRC stated that the expansion would meet the long-term residual stream disposal capacity needs of PERC for the remaining life of the facility through 2017.

- B. Staff comments: Since SERF received its determination of public benefit from the Department, the MRC municipalities have extended their contracts with PERC through 2018, and PERC has not signed a long-term contract with PTL for disposal of its residues. Instead, PERC has signed short-term (5 years or less) contracts with PTL and other landfills for the disposal of its residues. More MSW ash and FEPR are being generated by PERC than projected; according to the 2000 Annual Report for PERC, it generated 66,388 tons of FEPR and 52,373 tons of MSW ash in 2000.

As part of the Settlement Agreement (see Finding of Fact #3.A, above) Casella sold its interest in PERC. It subsequently purchased KTI's interest in Maine Energy. FEPR and OBW generated at Maine Energy are currently being disposed at PTL; ash from Maine Energy is not currently disposed at PTL.

Staff comment that at time the Secure III Expansion application was filed in March 1998, SERF estimated it would annually dispose of approximately 143,000 cubic yards of solid waste in the landfill. As licensed by the Department, the capacity of the Secure III Expansion is approximately 3.3 million cubic yards; the construction of this capacity has been approved by the Town of Hampden. The landfill was expected to provide capacity for approximately 23 years; it is possible the life of the landfill will be lessened by the Town of Hampden license process. Staff analyzed the estimates of percentage of waste by category in the Secure III Expansion application with the actual percentages disposed of in 1999 and 2000; the analysis indicates that the sole category

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MSW DISPOSAL AND)	
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which has, to date, exceeded the estimate is CDD. The actual percentage of the total waste disposed of all other categories is less than was estimated.

According to the operations manual update submitted with the 2000 annual report, PTL anticipates accepting approximately 246,500 cubic yards of waste in 2001; as shown in the table below, the higher total is due to increased amounts of MSW ash, FEPR and OBW, and CDD expected to be delivered to the facility, including the addition of residues from Maine Energy. The projected life of the landfill would be approximately 13.4 years at this rate of filling; since this is longer than current PERC contracts for the disposal of MSW ash and FEPR/OBW, it is not known if these PERC wastes will continue to be disposed at PTL beyond the current 5 year contracts. Disposal of waste in Phase VIII-A of the Secure III Expansion commenced in October 1999; thus, staff project capacity in the Secure III Expansion should be available until at least the end of 2012, if the landfill is constructed as approved by the Department.

A comparison of the quantities of waste proposed and accepted at PTL (in tons per year) between submission of the application for Public Benefit Determination and submission in April 2001 of the 2000 annual report is provided below.

WASTE STREAM	1997 public benefit determination (estimate)	1998 application (estimate)	1998 annual report (actual)	1999 annual report (actual)	2000 annual report (actual)
PERC MSW ash	40,000	43,000	41,515	43,903	52,413
PERC FEPR & OBW	60,000	65,000	5,010	25,073	15,897
CDD	15,000	15,000	36,412	47,903	24,023
MERC FEPR & OBW			6,738	30,646	35,014
Miscellaneous special waste	15,000 (special & non-special)	11,000 (special & non-special)	10,681	16,844	18,708
Miscellaneous non-special solid wastes			3,362	2,367	1,318
Treatment plant sludges	10,000	9,000	9,970	5,837	1,973
TOTAL WASTE	140,000	143,000	113,688	172,573	149,346

The quantity of waste, by category, PTL projected to accept in 2001 is provided below.

WASTE	PROJECTED FOR 2001 (from 5/2002 operations manual)
MSW incinerator & wood ash	66,000
FEPR & OBW	99,000
CDD	68,000
Treatment plant sludges	3,500

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MSW DISPOSAL AND)	
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Other wastes	10,000
TOTAL WASTE	246,500

Staff further comment that 38 M.R.S.A. § 1310-AA applies to the submission of an application for a new or expanded solid waste disposal facility. Requests to accept new wastes, through the submittal of special waste, minor revision and amendment applications, are routinely submitted by landfill and incinerator owners/operators. Such requests ordinarily do not trigger revisions to public benefit determinations at those facilities where a determination has been issued, nor do they trigger the submission of an application for a public benefit determination at solid waste disposal facilities that were licensed prior to the public benefit determination process. However, a public benefit determination is a Department approval, and may be modified through consideration of the applicable criteria used to originally evaluate the public benefit of a solid waste disposal facility if changes in the design or operation of the facility result in substantive changes to the estimates of quantities and types of wastes typically provided by an applicant as part of its demonstration that a proposed facility can meet immediate, short-term or long-term capacity needs of the state. Because the increase in the volume of waste PTL proposed to dispose of in the Secure III Expansion in 2001 increased over the annual volume proposed in the original application for the Secure III Expansion by approximately 100,000 cubic yards, and there is a proposed change in the nature of the wastes disposed, staff re-evaluated the public benefit of the Secure III Expansion with the inclusion of MSW as proposed in this application.

- C. Department findings: The Department finds that with approval of this proposal to accept unprocessed MSW, PTL will continue to meet immediate and short-term capacity needs for the State, and will meet long-term capacity needs provided the capacity of the Secure III Expansion is managed for long-term use, and thus it reconfirms the substantial public benefit of the Secure III Expansion. PTL's proposal to accept unprocessed MSW is consistent with the State Plan in that the SPO report noted that having 2 commercial landfills providing competitive disposal capacity for MSW and other wastes serves the state well; see Finding of Fact #3.B, above. The Department also finds that the State Plan does not address capacity needs for waste that is bypassed from incinerators, yet Chapter 403.6.C of the Rules requires that incinerators maintain valid contracts for disposal of bypass with solid waste facilities that have approval to accept the waste. PTL is not proposing the disposal of unprocessed MSW on a long-term basis; instead, it proposes to provide disposal capacity to meet the needs of Maine's incinerators. PTL's proposal is not inconsistent with local, regional or state waste handling systems in that incinerators are required to maintain contracts for the disposal of bypass wastes, the Settlement Agreement prohibits PTL from accepting waste from municipalities contracting with PERC for MSW disposal without PERC's written permission, and additional controls will ensure that the Department has sufficient oversight on the rate of filling of the Secure III Expansion. The Department further finds that, based on a review of the variations in life expectancy, disposal rate, and other relevant information, the Department may require PTL to implement measures to adjust the quantities and/or sources of unprocessed MSW accepted to ensure that the operation of the Secure III Expansion will remain consistent with the Public Benefit Determination for the Secure III Expansion, adjusted as necessary due to Department or local licensing actions including actions taken at any of the 4 incinerators from which the unprocessed MSW could be bypassed. Actions or modifications proposed by the Department would be subject to and carried out under the

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MSW DISPOSAL AND)	
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provisions of 38 M.R.S.A. §341-D(3) and based upon any findings of fact as determined by the Board of Environmental Protection.

To track the quantities of unprocessed MSW accepted, the Department finds that PTL shall take the following 4 actions. (1) Include in its monthly summaries of wastes received at PTL the amount and source of unprocessed MSW, as described in Finding of Fact #2, above, and following the same format used for the other reported wastes. (2) Include in its annual reports the amount of unprocessed MSW received at PTL from in-state sources and the amount of unprocessed MSW received at PTL from out-of-state sources; the source of the unprocessed MSW (as described in Finding of Fact #2, above); the in-place density of the landfilled waste; the volume of airspace utilized in the reporting period; and the estimated remaining permitted disposal capacity expressed in cubic yards. (3) Notify the Department if the annual capacity analysis conducted for any reporting period indicates that the capacity of Secure III Expansion is likely to be exhausted before the end of 2012, or if the sources of the wastes change in a significant manner. (4) Notify the Department if waste deliveries in excess of processing capacity at MSW incinerators continue from a particular incinerator for a period exceeding 1 week, and provide such information as the Department may request to demonstrate that the deliveries are due to either planned outages or unplanned production problems.

7. OTHER FACTS AND CONCLUSIONS

All other findings made in the licenses for the Secure III Expansion remain unchanged.

BASED on the above findings of fact, the Department makes the following CONCLUSIONS:

1. The disposal of unprocessed MSW as proposed by PTL will not pollute any water of the state, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance.
2. PTL shall not accept waste from an incinerator without verifiable authorization from either the owner/operator of an incinerator or from a regulatory entity with jurisdiction over the incinerator that a bypass has been called or, for holders of interruptible contracts, the contracts have been interrupted in accordance with the contractual provisions.
3. The total amount of unprocessed MSW accepted by Maine Energy plus the unprocessed MSW bypassed to PTL by Maine Energy shall not exceed 310,000 tons in any calendar year, and the annual amount of RDF incinerated at Maine Energy shall not be less than 70% of the total annual amount of MSW processed by Maine Energy.
4. The disposal of unprocessed MSW in the Secure III Expansion will not unreasonably affect the expected life of the landfill, provided PTL does not significantly increase the amount of solid waste it accepts for disposal on an annual basis. In order to monitor the quantities of unprocessed MSW received at PTL, PTL shall collect and report in its monthly summaries of wastes received at PTL the amount and source of unprocessed MSW, as described in Finding of fact #2, above, and following the same format used for the other reported wastes. PTL shall also collect and report in its annual report to the Department data on the amount of unprocessed MSW received (from both in-state and out-of-state sources); the sources of the unprocessed MSW as described in Finding of Fact #2; the in-place density of the landfilled wastes; the

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MSW DISPOSAL AND)	
REVISED PUBLIC BENEFIT DETERMINATION)	
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volume of airspace utilized during the reporting period; and the estimated remaining permitted disposal capacity expressed in cubic yards. Should this annual analysis for the reporting period indicate the total estimated capacity of the Secure III Expansion will be exhausted before the end of 2012, or if the sources of wastes accepted change in a significant manner, PTL shall notify the Department of these changes. The Department will review this capacity analysis to ensure that the capacity of the Secure III Expansion will not be exhausted before the end of 2012, adjusted as necessary due to Department or local licensing actions and may require PTL to implement measures to adjust the quantities and/or sources of unprocessed MSW accepted at the facility. PTL shall also notify the Department if waste deliveries in excess of processing capacity at MSW incinerators continue from a particular incinerator for a period exceeding 1 week, and provide such information as the Department may request to demonstrate that the deliveries are due to either planned outages or unplanned production problems.

5. Approval to accept the additional wastes under the limited circumstances identified in this license should facilitate the operation of Maine's MSW incinerators.

THEREFORE, the Department APPROVES the above noted application of NEW ENGLAND WASTE SERVICE OF MAINE, INC. d/b/a PINE TREE LANDFILL SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached as Appendix A.
2. PTL shall not accept waste from an incinerator without verifiable authorization from either the owner/operator of an incinerator or from a regulatory entity with jurisdiction over the incinerator that a bypass has been called or, for holders of interruptible contracts, the contracts have been interrupted in accordance with the contractual provisions.
3. The total amount of unprocessed MSW accepted by Maine Energy plus the unprocessed MSW bypassed to PTL by Maine Energy shall not exceed 310,000 tons per year. The annual amount of RDF incinerated at Maine Energy shall not be less than 70% of the total annual amount of MSW processed by Maine Energy.
4. PTL shall include in its monthly summaries of wastes received at PTL the amount and source of unprocessed MSW, as described in Finding of Fact #2, above, and following the same format used for the other reported wastes.
5. PTL shall include in its annual reports to the Department the following: the amount of unprocessed MSW received at PTL from in-state sources and the amount of unprocessed MSW received at PTL from out-of-state sources; the sources of the unprocessed MSW (as described in Finding of Fact #2); the in-place density of the landfilled wastes; the volume of airspace utilized in the reporting period; and the estimated remaining permitted disposal capacity expressed in cubic yards.
6. PTL shall notify the Department if the annual capacity analysis conducted for any reporting period indicates that the capacity of Secure III Expansion is likely to be exhausted before the end of 2012, or if the sources of the wastes change in a significant manner.
7. PTL shall notify the Department if waste deliveries in excess of processing capacity at MSW incinerators continue from a particular incinerator for a period exceeding 1 week and provide such information as the

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Department may request to demonstrate that the deliveries are due to either planned outages or unplanned production problems.

8. All other Findings of Fact, Conclusions and Conditions remain as approved in Department License # S-01987-WD-GZ-N, and subsequent modifications to that license, and are incorporated herein.

DONE AND DATED AT AUGUSTA, MAINE THIS 21st DAY

OF August, 2002.

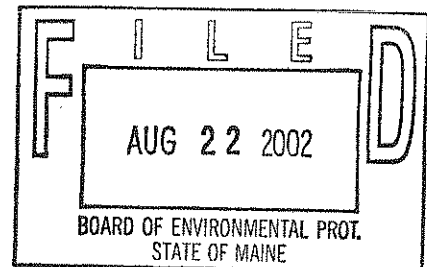
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: *Martha G. Kirkpatrick*
Martha G. Kirkpatrick, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Date of initial receipt of application: March 26, 2001
Date application accepted for processing: April 17, 2001
Date of original approval: February 26, 2002

Date filed with Board of Environmental Protection:



This Order was prepared by Cynthia W. Darling, Bureau of Remediation & Waste Management

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Appendix A

STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL. VIOLATIONS OF THE CONDITIONS UNDER WHICH A LICENSE IS ISSUED SHALL CONSTITUTE A VIOLATION OF THAT LICENSE, AGAINST WHICH ENFORCEMENT ACTION MAY BE TAKEN, INCLUDING REVOCATION.

1. **Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the licensee. Any consequential variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
2. **Compliance with All Applicable Laws.** The licensee shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
3. **Compliance with All Terms and Conditions of Approval.** The licensee shall submit all reports and information requested by the Department demonstrating that the licensee has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. **Transfer of License.** The licensee may not transfer the solid waste facility license or any portion thereof without approval of the Department.
5. **Initiation of Construction or Development Within Two Years.** If the construction or operation of the solid waste facility is not begun within two years of issuance or within 2 years after any administrative and judicial appeals have been resolved, the license lapses and the licensee must reapply to the Department for a new license unless otherwise approved by the Department.
6. **Approval Included in Contract Bids.** A copy of the approval must be included in or attached to all contract bid specifications for the solid waste facility.
7. **Approval Shown to Contractors.** Contractors must be shown the license by the licensee before commencing work on the solid waste facility.
8. **Background of key individuals.** A licensee may not knowingly hire as an officer, director or key solid waste facility employee, or knowingly acquire an equity interest or debt interest in, any person convicted of a felony or found to have violated a State or federal environmental law or rule without first obtaining the approval of the Department.
9. **Fees.** The licensee must comply with annual license and annual reporting fee requirements of the Department's rules.

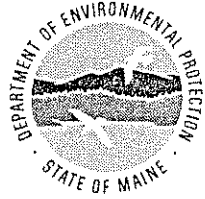
ADDITIONAL STANDARD CONDITIONS FOR
SOLID WASTE DISPOSAL FACILITIES

10. Recycling and Source Reduction Determination for Solid Waste Disposal Facilities. This condition does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

The solid waste disposal facility shall only accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by 38 MRSA Chapter 13.

11. Deed Requirements for Solid Waste Disposal Facilities. Whenever any lot of land on which an active, inactive, or closed solid waste disposal facility is located is being transferred by deed, the following must be expressly stated in the deed:

- A. The type of facility located on the lot and the dates of its establishment and closure.
- B. A description of the location and the composition, extent, and depth of the waste deposited.
- C. The disposal location coordinates of asbestos wastes must be identified.



DEP FACT SHEET

Appealing a Commissioner's Licensing Decision

issued: November 1999

contact: (207) 287-2811

SUMMARY

One of two methods is available to an aggrieved person for appealing a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner -- in an administrative process before the Board of Environmental Protection ("Board") or a judicial process before Maine's Superior Court. This FACT SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, will assist aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeals. A failure to file an appeal within the identified time periods will result in the Commissioner's decision becoming final.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

Maine Revised Statutes Title 38, section 341-D(4) and DEP Rule Chapter 2, section 21(B)

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

An appeal must contain the following information:

1. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
2. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
3. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
4. *All the matters to be contested.* As part of the appeal, the Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

5. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
6. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in DEP Rule Chapter 2, section 21(B)(3).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A licensing file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If an applicant proceeds with a project pending the outcome of an appeal, it runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.21(D); 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this FACT SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
